35TH CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 8.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1858.—Ordered to lie on the table.
DECEMBER 13, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

STATE OF ALABAMA *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Exhibits marked 1, 2, and 3, and A, B, C, D, E, F, G, H, I, transmitted to the Senate.
3. Statement of the claim in behalf of the State of Alabama.
4. United States Solicitor's brief.
5. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 7th day of December, [L. S.] A. D. 1858.

SAML. H. HUNTINGTON,
Chief Clerk Court of Claims.

Petition.

THE STATE OF ALABAMA *vs.* THE UNITED STATES.

To the honorable Judges of the Court of Claims:

Your petitioner, J. F. Jackson, agent of the State of Alabama, showeth unto your honors that, by the third clause of the sixth section of the compact made with the State of Alabama on her admission into

the Union, 2d March, 1819, it is stipulated "that five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the 1st day of September in the year 1819, after deducting all expenses incident to the same, shall be reserved" for internal improvements, "of which three-fifths shall be applied under the direction of the legislature thereof, (the State,) and two-fifths under the direction of Congress."

That by the third section of the act of 3d of May, 1822, it is enacted "that the Secretary of the Treasury shall from time to time, and whenever the quarterly accounts of public moneys of the several land offices in the State of Alabama shall be settled, pay three per cent. of the net proceeds of the sales of the lands of the United States lying within the State of Alabama," &c., "to such person or persons as may or shall be authorized by the legislature of the State of Alabama to receive the same."

That a subsequent act surrendered the two per cent. fund also to the State.

Under the foregoing stipulation and provision the United States made several adjustments of the accounts of lands sold in Alabama, and from time to time allotted to the State certain sums alleged to be the full amount due to the State. In 1848 the State had reason to distrust the accuracy of these settlements, and her legislature passed an act for the appointment of an agent to revise them. On this revision at the Treasury Department, it was ascertained and admitted that $103,991 20, which had accrued to the State between the years 1820 and 1831, had not been paid, though unquestionably due; and this sum was therefore paid in January, 1850.

The State, pursuant to a late act of her legislature, now claims interest on this deferred payment. Freely admitting that, as a general rule, the United States are not liable to interest, and ought not to pay it, yet the State, in common with all the officers of the government, and every Congress since 1776, is also aware that there are exceptions to the rule. It is undeniable that cases occur in which the principle and usage demand the payment of interest by the United States as the due measure of justice. Numerous precedents exist of this practice.

Alabama claims that hers is a case of this peculiarity. She asks but that which is strictly just. Although injured by detention of moneys which were hers by purchase and payment of consideration, yet she would silently submit to the loss did she not also feel it right that she should appeal to national justice. To it she does appeal, not for a favor, but a *right;* a right, if purchase and payment on the one hand, withholding and injury on the other, combined with precedent, principle, and the highest usages of the country, *can* create a right against a power which is liable only through the spontaneous action of her own representatives.

Should this claim, however, fail to receive the anticipated recognition of the court, then the State presents another and entirely distinct claim; one which she would not advance but in case of the denial of her prior claim. This secondary one *none will contest.* It

is merely for *re*payment to the State of moneys which she overpaid to the United States, as interest on her bonds owned by the United States, through the error of the latter; moneys which she did not owe, and which are, in truth, her property in the United States treasury.

DISTRICT OF COLUMBIA, *County of Washington.*

Personally appeared before me ——— ———, an acting justice of the peace in and for said District, J. F. Jackson, agent for the State of Alabama, who says, on oath, that the facts set forth in the foregoing petition are true, according to the best of his knowledge and belief, and that said State is the owner of the claim mentioned in said petition, and that he has no interest in the same other than what he may be entitled to as agent and attorney for said State.

Sworn to and subscribed before me, this the ——— day of April, A. D. 1856.

EXHIBIT No. 1.

TREASURY DEPARTMENT,
Comptroller's Office, February 16, 1852.

SIR: On the 12th instant you were pleased to propound four questions, which, for your convenience, I shall copy and answer them in their order.

1st question. Were the *two* and *three* per cent. accounts of the State of Alabama, from the admission of the State, in 1819 to 1850, revised in your office, and what amount was thereby found due to the State, and when was it paid?

1st answer. They were. There was found due $103,911 99, which was paid on the 16th of February, 1850.

2d question. Had the previous adjustments of these accounts, from time to time, been made by the United States officers, and did they include the payments made for lands sold, by moneys transferred from lands relinquished, and by redeemed forfeitures, or were those payments first brought into the account under the revision?

2d answer. Previous adjustments had been made, from time to time, of the three per cent. account, but not quarter yearly, as required by law, throughout the whole period. No account of the two per cent. had been adjusted when the act of September 4, 1841, was passed. The first account of the two per cent. fund was stated by the Commissioner of the General Land Office on the 4th of November, 1842, and was revised in this office on the 7th of the same month. This will be explained hereafter.

After the account was passed, which is last mentioned, other accounts were adjusted for the two per cent., from time to time, with as much regularity as the business of the office permitted. The accounts, before 1850, of the three and two per cent., included the payments made for land sold, but moneys transferred from lands relinquished, and by redeemed forfeitures, were first brought into the accounts with Alabama in 1850. This will be explained hereafter.

3d question. Be so good as to favor me with a copy of the gross amount of those payments in each quarter, with the date of the quarter wherein they accrued to the credit of the State, as ascertained by the revised account?

3d answer. Copies showing the amount received in each of three districts, the amount of the three per cent., and the amount of the two per cent. computed thereon, and presented in an Appendix, designated A, B, and C. These are the only districts embraced in the account of 1850.

4th question. Was the State entitled to 5 per cent. on these sales, like all other sales, and was the balance on said account founded on them, in common with ordinary sales?

4th answer. The third proposition in the 6th section of the act of March 2, 1819, chapter 47, entitled "An act to enable the people of the Alabama Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, Stat. at Large, vol. 3, p. 491, is as follows, to wit:

"Third. That five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the 1st day of September, 1819, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within said State, under the direction of the legislature thereof; and two-fifths to the making of a road or roads leading to the said State, under the direction of Congress." The propositions were acceded to, and Alabama was admitted into the Union on the 16th of December, 1819.

There were several acts passed in regard to the funds so reserved; but they did not vary the amount to be expended in the State, (three per cent.,) nor the amount to be expended by Congress in making roads leading to said State, (two per cent.,) until 1841, when an act was passed which will be noticed. In estimating the three per centage, the same rule was observed in regard to Alabama as was observed in other States between which and the United States a similar compact existed, until the year 1846, when a different rule was adopted by Mr. Walker, Secretary of the Treasury.

Before August 17, 1846, the rule had been not to compute any per centage on money derived from the sales of lands made before the State was admitted into the Union, although the money was paid after such admission.

In 1846 the several settlements of the three per cent. fund, made in stated accounts between the State of Ohio and the United States, were taken up and revised by James H. Piper, Acting Commissioner of the General Land Office, and the rules he proposed to establish were communicated to Mr. Walker, Secretary of the Treasury, by letter, dated August 17, 1846, a copy of which is presented in the Appendix, designated D. The rule is deduced from the 1st, 2d, and 3d points stated, and it is, that if the money is realized after the State came into the Union, the three per cent. is to be computed upon it. It applies as fully to the two per cent. to be expended by the United

States as to the three per cent. to be expended on roads, &c., within the State, by its directions.

Mr. Walker wrote upon the back of said letter "Approved," and signed his initials, "R. J. W." The account of the State of Ohio was passed, as thus approved, and embraced the period between the 30th of June, 1802, and the 31st of December, 1845.

There was paid to the State of Ohio, on such revision of her accounts, the sum of $65,749 09. Soon after this the accounts of Illinois and Indiana were revised and settled under the same rule. There was paid to Illinois $26,192 15; there was paid to Indiana $49,522 70

Memorials were presented to the Senate and House of Representatives of the Congress of the United States, at the 1st session of the 26th Congress, from the State of Alabama, in regard to the said two per cent. fund so reserved, and to be expended by the United States in making a road or roads to said State, as mentioned above. The said State, for reasons contained in said memorial, desired so to change the compact as to have the permission to expend said two per cent. under her own authority.—(House Journal, 1st session 26th Congress, page 608 ; Senate Journal, 1st session 26th Congress, page 41.)

In the Senate, bill No. 11 was reported to carry into effect the prayer of the legislature, and it was passed by that body.

The distribution of the proceeds of the sales of the public lands being a subject of legislation, the relinquishment of said two per cent. was made to the State of Alabama on all lands sold by the United States in said State since the 1st day of September, 1819, payable in two instalments—the first on the 1st day of May, 1842, and the other on the 1st day of May, 1843: "*Provided*, That the legislature of said State shall first pass an act declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the legislature of Alabama, to the connexion, by some means of internal improvement, of the navigable waters of Mobile bay with the Tennessee river, and to the construction of a continuous line of internal improvement from a point on the Chattahooche river, opposite West Point, in Georgia, across the State of Alabama, in a direction to Jackson, in the State of Mississippi."—(Vol. 5, page 457–8.)

The State of Alabama accepted of the said relinquisment by an act approved on the 29th of December, 1841. A copy of this act of Alabama will be added in the Appendix, designated E.

Some time after the settlements of the accounts of Ohio, Illinois, and Indiana, on the principle mentioned, the State of Alabama appointed an agent to examine the settlement of her three per cent. account from the 1st of September, 1819, and the said two per cent. account from the acceptance of said relinquishment as aforesaid. The agent contended the rule adopted in settling the accounts of Ohio, Illinois, and Indiana, should govern in settling the accounts of Alabama.

Mr. Butterfield, Commissioner of the General Land Office, on the 16th of September, 1849, decided that she was not entitled to the per centage on any money arising from the sales of the public lands

before the 1st of September, 1819, the date of the compact. A copy of his decision is in the Appendix, designated F.

An appeal was taken from his decision to the Secretary of the Interior.

At that time D. C. Goddard, esq., was acting Secretary of the Interior, and on the 20th of October, 1849, he submitted the question to the Attorney General, Mr. Johnson.

A copy of his letter in the Appendix is marked G. Mr. Johnson gave his opinion on the 21st of November, 1849, which is presented in Appendix, marked H. He considered the question to have been decided and settled by Mr. Walker in the case of Ohio, and thereafter practiced upon in the settlements with Illinois and Indiana, and, therefore, that the decision thus made should be applied to Alabama.

I have been thus particular in presenting the facts to justify me in passing the account in favor of Alabama.

If I had acted on the account of Ohio in 1846 I should have rejected it. A practice and the decisions of more than forty years were violated and set at nought by reopening and revising the accounts of Ohio. I hold the accounting officers nor the departments should disturb the settlements long made on principles well established. Mr. Johnson considered himself concluded by three decisions, the oldest of which was no more than three years' standing ; and yet, a course of decisions of more than forty years' standing applied in hundreds of settlements, and disregarded when they operate against the government. My opinion is, that Congress should alone apply the remedy if relief is demanded in such cases.

When the report allowing the abovementioned sum of $103,911 99 to Alabama was presented to me for revision, having ascertained that Mr. Walker decided in favor of Ohio, that his decision had been applied to the claims of Indiana and Illinois, and that the Attorney General had considered the question as settled, I passed the account, and thereby decided, under the circumstances, that the said State of Alabama was entitled to five per cent. on money paid after the 1st of September, 1819, when the land on which it was paid was sold before that date.

The State of Alabama was entitled to three per cent. for the purpose of making improvements within the State, under the compact of March 2, 1819, and to the two per cent. under the act of September 4, 1841, (as construed as mentioned above, so far as said construction extended and applied to increase the aggregate,) and the said balance was founded on the money received after September 1, 1819, although the sales were made before. In the postscript to your letter you requested me to give the information that would explain the whole matter. In consequence of this request, I have taken a wider range in answering the specific inquiries than I should otherwise have done, and I do not know of anything I can add within the scope of the specific or general inquiries.

I have not considered myself at liberty to say anything on the subject of the present demand of interest.

By the compact the State of Alabama was to expend the three per cent. fund for the benefit of both parties.

It appears from her memorial, dated December 31, 1836, that she had not at that time expended any part of the three per cent. fund, but, on the contrary thereof, had invested the same and placed it on interest.

I do not find that the State of Alabama, by any act of her legislature, or by any proposition made by her senators or representatives in Congress, desired the United States to construct a road or roads leading to said State.

A copy of the memorial of the State of Alabama, relating to the three and two per cent. fund is in the Appendix designated I.

The papers left by the Hon. Mr. Downs are returned herewith.

Most respectfully, yours,

ELISHA WHITTLESEY.

Hon. A. P. BUTLER,
Chairman of Committee on the Judiciary,
Senate of the United States.

EXHIBIT No. 2.

TREASURY DEPARTMENT,
Comptroller's Office, June 23, 1858.

SIR: The United States never held any claims for principal and interest of bonds of the State of Alabama upon their own account.

Various treaties with Indian tribes, and the laws carrying them into effect, required the Secretary of the Treasury and the Secretary of War, respectively, to invest certain moneys belonging to these Indians under these treaties in stocks and securities bearing interest in trust for those tribes, such interest being paid to them through those departments.

It appears, from the reports made by these departments from time to time, that large sums were so invested in bonds of the State of Alabama in trust for those Indians under the treaties referred to. These bonds did not belong to the United States, but to the Indians, for whom the investments were made, and they alone were benefited by the interest which accrued on such investments.

The reply to the inquiry of the Court of Claims is, therefore, that the State of Alabama was not indebted to the United States by bond or otherwise; but that certain officers of the United States held bonds of the State of Alabama in trust for several Indian tribes pursuant to treaty stipulation with those Indians, and the State of Alabama was indebted to those Indians.

The date of the purchase of those bonds, and the mode in which the interest thereon was collected in behalf of the Indians, can be probably stated in detail by the Secretary of the Treasury and the Secretary of War, who were charged with these trusts; the particulars do not appear on the books of this office, except by the results.

Very respectfully,

W. MEDILL, *Comptroller.*

Hon. HOWELL COBB,
Secretary of the Treasury.

EXHIBIT No. 3.

To the Court of Claims:

I herewith return, agreeably to his request, the argument enclosed by E. W. Garnett, esq., assistant clerk, on the 19th instant, as containing the information required by the Comptroller, to enable him to report an answer to your order of the 15th instant.

The report of the Comptroller of the 23d instant, in view of this additional information, is herewith enclosed.

The concluding paragraph of that report refers to certain details in regard to the purchase and the interest upon bonds of the State of Alabama, held by the Secretary of the Treasury in trust for certain Indian tribes under treaty stipulations, as being in my possession.

In view of that reference, I beg leave to state that this department has purchased and held such bonds only as investments for the Chickasaw Indians under the treaties with that nation of 1832 and 1834.

By the terms of those treaties certain lands belonging to that nation were required to be surveyed and sold for their benefit. The proceeds of such sales were moneys belonging to the Chickasaws, and not to the United States. It was required to be invested under the direction of the President, by and with the consent of the Senate. These investments were the property of the Chickasaws, precisely like the money with which they were purchased.

It appears, by the records of my office, that the first purchase of Alabama bonds in trust for the Chickasaws was on a contract made on the 31st of March, 1836, with J. W. Garth, agent of the branch of the Bank of the State of Alabama, at Decatur, for 500 bonds of that State, issued to increase the capital of that branch, for $1,000 each, bearing interest at five per cent. per annum. The price paid for this investment was $1,040 for each bond of $1,000 out of money belonging to the Chickasaws.

On the 4th of April, 1836, a further purchase of sixty-five bonds of the State of Alabama, of $1,000 each, bearing interest at five per cent., was made from J. D. Beers, esq., of New York, at 104½ per cent., which were likewise paid for out of the money belonging to the Chickasaws.

On the 11th of May, 1836, a further purchase of 250 bonds of that State, of $1,000 each, bearing interest at five per cent., was made from B. M. Lane, esq., agent of the branch at Decatur, at 103½ per cent., and paid for out of money belonging to the Chickasaws.

On the 29th of March, 1837, a further purchase of 500 bonds of that State, of $1,000 each, bearing interest at five per cent., was made from B. M. Lane, esq., agent as above, at $990 for each bond of $1,000, and paid for also out of money belonging to the Chickasaws.

The foregoing comprise all the stock or bonds of the State of Alabama which appear to have been purchased or held by this department at any time. Under the treaties with the Chickasaws, pursuant to which they were purchased, the interest was from time to time, applied to their use, upon requisitions of the Secretary of War, until 1849;

since which it has been so applied under the requisitions of the Secretary of the Interior.

Of the $1,315,000, purchased as above, $500,000 of these bonds, on the 11th of February, 1841, were transferred to the Secretary of War, for the use of the Choctaw Indians, under the 13th article of the treaty with the Chickasaws of 1834, being for the purchase of a territory for their use.

The balance of Alabama bonds then held by this department, in trust for the Chickasaws, being $815,000, were, on the 1st of October, 1851, under the sanction of the then President of the United States, exchanged for other stocks yielding a larger income. Since that date this department has held no stocks or bonds of the State of Alabama on account of the Chickasaws, or any other account.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

TREASURY DEPARTMENT, *June* 24, 1858.

A.

ST. STEPHEN'S, ALABAMA.

Period.		Aggregate of relinquishments and forfeitures liable to the 2 and 3 per cent. fund.	Amounts to which the State of Alabama was entitled therein at—	
Year.	Quarter.		3 per centum.	2 per centum.
1821	3d quarter	$80,845 84	$2,425 37	$1,616 91
1822	do	879 86	26 39	17 59
1823	do	163 84	4 91	3 27
1824	do	4,578 97	137 36	91 57
	4th quarter	6,199 86	185 99	123 99
1825	1st quarter	49,553 01	1,486 59	990 06
	2d quarter	9,816 26	294 48	196 32
1826	4th quarter	447 84	13 43	8 95
1827	1st quarter	610 49	18 32	12 20
	2d quarter	8,840 92	265 22	176 81
	3d quarter	4,812 56	144 37	96 25
1828	do	310 99	9 32	6 21
1829	1st quarter	1,449 10	43 47	28 98
	2d quarter	7,214 02	216 42	144 28
	3d quarter	5,015 03	150 45	100 30
1831	1st quarter	689 87	20 69	13 79
	2d quarter	2,845 25	85 35	56 90
	3d quarter	3,746 33	112 38	74 92

B.

HUNTSVILLE, ALABAMA.

Period.		Aggregate of relinquishments and forfeitures liable to the 2 and 3 per cent fund.	Amounts to which the State of Alabama was entitled thereon at—	
Year.	Quarter.		3 per centum.	2 per centum.
1820	3d quarter	$658,143 23	$19,744 29	$13,162 86
1822	do	4,179 43	125 38	83 58
1824	do	280 18	8 40	5 60
	4th quarter	1,078 27	32 34	21 56
1825	1st quarter	51,986 40	1,559 59	1,039 72
	2d quarter	20,773 99	623 21	415 47
1826	3d quarter	9,077 43	272 32	181 54
	4th quarter	3,696 42	110 89	73 92
1827	1st quarter	3,833 96	115 01	76 67
	2d quarter	30,326 48	909 79	606 52
	3d quarter	41,315 44	1,239 46	826 30
1828	2d quarter	75	02	01
	3d quarter	79 33	2 37	1 58
	4th quarter	375 52	11 26	7 51
1829	1st quarter	3,431 93	102 95	68 63
	2d quarter	57,265 67	1,717 97	1,145 31
	3d quarter	39,013 29	1,170 39	780 26
1830	4th quarter	148,896 43	4,466 89	2,977 92
1831	1st quarter	16,395 70	491 87	327 91
	2d quarter	227,944 34	6,838 33	4,558 88
	3d quarter	30,892 60	926 77	617 85

C.

CAHABA, ALABAMA.

Period.		Aggregate of relinquishments and forfeitures liable to the 2 and 3 per cent fund.	Amounts to which the State of Alabama was entitled thereon at—	
Year.	Quarter.		3 per centum.	2 per centum.
1821	3d quarter	$249,643 40	$7,489 30	$4,992 86
1822	do	2,566 43	76 99	51 32
1823	do	285 48	8 56	5 70
1825	do	194,815 60	5,844 46	3,896 31
1827	2d quarter	60,404 78	1,812 14	1,208 09
1829	do	41,753 46	1,252 60	835 06
1831	1st quarter	3,638 31	109 14	72 76
	2d quarter	38,638 00	1,159 14	772 76

C—Continued.

Districts.	Relinquishments and forfeitures.	Three per cent.	Two per cent.
St. Stephen's	$188,020 03	$5,640 50	$3,760 30
Huntsville	1,348,986 79	40,469 60	26,979 60
Cahaba	591,745 46	17,752 33	11,834 46
	2,128,752 28	63,862 43	42,574 36
Five per cent. thereon	106,437 61		63,862 43
Fractions lost			82
	106,437 61		106,437 61

Amount of 5 per cent. on relinquishments and forfeitures, as above, $2,128,752 28		$106,437 61
Amount of 3 per cent. fund due the State of Alabama, as per restatement	$58,905 90	
Amount of 2 per cent. fund due the State of Alabama, as per restatement	45,006 09	
		103,911 99
Making a difference of		2,525 62

Which arises from the correction of errors which had been made in previous adjustments of the 2 and 3 per cent. fund accounts of the State of Alabama *against the United States* to that extent, resulting from purchase money over credited, repayments, and incidental expenses short charged, &c.

D.

GENERAL LAND OFFICE, *August* 17, 1846.

SIR: This office has completed the revision of the account between the United States and the State of Ohio for the three per cent. fund accruing to that State on the net proceeds of the sales of public lands from the 30th June, 1802, when she was admitted into the Union, to the 31st December, 1845. In that revision the following principles have governed:

1st. In entries made under the old credit system, such only as were fully paid for have been treated as lawful and absolute sales. The mere entry under that system, without complete payment, has been regarded only as a contract to purchase on certain conditions of future and full payment, with a stipulation that on failure the land should, as was actually the case, revert to the United States: therefore—

2d. All payments made on account, where the lands have reverted, have been excluded from the amount upon which the three per cent. has been calculated.

3d. When payments were made before Ohio was admitted into the Union on lands which were fully paid for *after* she was admitted, such prior payments have been excluded from the calculation because, at the inception of the sale, Ohio was not a State.

4th. This account embraces lands in Ohio ceded by the Wyandotts. The treaty of the 23d April, 1836, with that tribe, in virtue of which their lands were acquired, requires that the net proceeds, after deducting the expenses incident to the treaty and sale, be paid to the Indians In reference to the 3 per cent. account, the net proceeds have been ascertained by deducting from the gross amount of the purchase only the salaries of the officers and the contingent expenses of the office. The amounts paid the Indians have not been deducted, that never having been deemed a proper charge against the fund accruing to the several States.

These principles are respectfully submitted for your consideration and decision.

With great respect, your obedient servant,

JAMES H. PIPER,
Acting Commissioner.

Hon. R. J. WALKER,
Secretary of the Treasury.

Endorsed:
Approved.

R. J. W.

E.

AN ACT to accept the two per cent. fund.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened,* That, in pursuance of the seventeenth section of an act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," passed by the Congress of the United States, and approved the fourth of September, eighteen hundred and forty-one, the State of Alabama hereby accepts the relinquishment of the "two per cent. fund" on the terms and conditions in said seventeenth section expressed.

SECTION 2. *Be it further enacted,* That the whole of the said "two per cent. fund" shall be faithfully applied, under the direction of the legislature of Alabama, to the connexion of some means of internal improvement of the navigable waters of the bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochee river, opposite West Point, in Georgia, across the State of Alabama in a direction to Jackson, in the State of Mississippi; and, so far as relates to the faithful application of said "two per cent. fund" to the purposes aforesaid, this act is hereby declared unalterable, without the consent of Congress.

SECTION 3. *And be it further enacted,* That the cashier of the Bank of the State of Alabama be, and he is hereby, authorized and required

to demand and receive the said two per cent. fund, as the same may become due and payable, and shall keep the same on special deposit.

NATHANIEL TERRY,
President of the Senate.
DAVID MOORE,
Speaker of the House of Representatives.

Approved December 29, 1841.

BEN. FITZPATRICK.

DEPARTMENT OF STATE,
Tuscaloosa, Alabama, January 23, 1842.

The foregoing I certify to be a true copy of the original account on file in this department.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of the State, at Tuscaloosa, the 23d day of January, A. D. 1842, and of American Independence the sixty-sixth.

W. GARRETT,
Secretary of State.

F.

Decision in the matter of the revision of the Alabama three and two per cents., under the 3d part of the 6th section of the act of 3d March, 1819, for the admission of Alabama into the Union.—U. S. Statutes at Large, vol. 3, page 491, and the 17th section of the act of 4th September, 1841, same statutes, vol. 5, page 457.)

This act of 1819 requires the reservation for certain specified objects, for the benefit of the State of Alabama, for the "net proceeds" of the lands lying within her territory, and which shall be sold by Congress from and after the 1st September, 1819, "after deducting all expenses incident to the same."

The State is therefore entitled to a per centage—

1. On the "proceeds" of sales within her territory which *originated on* and *after* the 1st September, 1819; but it is to be understood as the intent of the law that the sales thus referred to are *perfected* sales, in which the conditions have been fully complied with, and *complete payment* made of the *whole* purchase money.

2. On all such sales, although paid for, in whole or in part, by the *relinquishment* and *transfer* to them of payments which had originally been made on lands in Mississippi, or on other lands in Alabama.

3. On money paid on all sales made on and after the 1st September, 1819, when lands which, on account of failure to complete payment, reverted to the United States, but in which, under the operation of the relief laws of 1826, 1828, 1830, and 1831, purchasers may have been allowed to redeem them, and in effect to apply the money to complete their purchases, thereby giving validity to such sales.

4. On the net proceeds of the Poulitor lands in the Chickasaw cession of 1832; not, however, under the law of 1819, which does not contemplate any trust fund like this, secured as it is by treaty

provisions for the Chickasaws, but because I find special authority of law for it in the 3d section of the act of Congress, approved July 4, 1836, entitled "An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States in regard to the five per cent. fund and the school reservations," (U. S. Stat., vol. 5, page 116,) *and the allowance must so appear in the adjustment.*

5. The State is *not* entitled to a per centage in any case where a sale was made before the 1st September, 1819, even though full and final payment was made *after* that date. She has no right to a per centage on any part of the proceeds, neither the part paid before the 1st September, 1819, nor the part paid *after* that date, because the law of 1819 expressly treats of lands which "shall be sold" on and after, &c. Now, when a sale had its inception *before* that date, and the terms of contract were afterwards complied with, the right and title relate back, to take effect from, and become absolute from, the date of inception; and the sales of this class, being therefore made before the 1st September, 1819, are not within the scope of the act of 1819.

6. The claim of the State, under the act of 1819, is subject to all such relief laws or other legal enactments as Congress have since deemed proper to pass for the final disposal of the public lands, for closing up sales by allowing discounts on the purchase money, or for reducing the price of the public lands. That act, by employing terms of future signification as to sale from and after 1st September, 1819, intended of course that such sales should be under whatever enactments Congress from time to time might deem proper to pass, never intending to abridge or put any limit on Congress in the subsequent legislation in regard to them.

7. The State, in this final revision, must be *debited* against the gross proceeds of sales, with all expenses on and subsequent to the 1st September, 1819, on sales of Alabama lands.

8. Against the gross proceeds, with all repayments of purchase money, and also of forfeitures, on and after 1st September, 1819.

9. Against the gross proceeds with all payments originally made on Alabama lands, but subsequently relinquished and applied to pay for lands in Mississippi.

10. And against the ascertained per centage on the net proceeds, the State must, of course, be debited with the aggregate of all per centages heretofore paid.

If exceptions be taken to any of the points now decided, and an appeal be asked for, let the appeal be presented in the form of a written communication, setting forth the points and the grounds of objection. The accountant will then prepare a proper letter submitting the appeal.

After the decision of the appellate power, let the adjustment be reviewed by the accountant, who will see that it is made in accordance with the principles laid down in the foregoing, as they may be modified or sustained by the appellate authority; let each schedule be certified by the accountant as containing results actually ascertained and tested by himself, as accountant of the General Land Office, from the official returns and records in that office. Let the adjustment also

be accompanied by a statement exhibiting any difference that may exist, and accounting for it between the agent's account, in behalf of the State, and that certified to me as correct and final by the accountant of the General Land Office.

J. BUTTERFIELD,
Commissioner.

SEPTEMBER 19, 1849.

G.

DEPARTMENT OF THE INTERIOR,
October 20, 1849.

SIR: By the act of March 2, 1819, to enable the people of Alabama Territory to form a State government, 5 per cent. of the net proceeds of the lands lying within the said Territory, and which should be sold by Congress from and after the 1st of September, 1819, is reserved for making roads, &c.

In the settlement of the Alabama 5 per cent. account, the Commissioner of the General Land Office has decided, among other things, as the 5th point, that the State is not entitled to per centage on any lands entered prior to the 1st of September, 1819, even though full and final payment was not completed until after that date; and that she is not entitled to per centage on any part of the proceeds, neither on the amount paid before the 1st of September, 1819, nor the part after that date.

It appears that in the settlement of the 5 per cent. accounts of Ohio, Indiana, and Illinois, those States were allowed per centage on all money paid subsequent to the respective dates of their admission into the Union on lands which had been entered prior to that date, but not then fully paid for.

The agent of the State of Alabama appeals from the decision of the Commissioner of the General Land Office, but waives all objection to the principles asserted by the Commissioner except the 5th, which you will find at large in the Commissioner's decision herewith.

In the consideration of this claim the question arises, whether the matter under Mr. Walker's decision in regard to Ohio, and the action thereunder in regard to Indiana and Illinois, should be considered "*res adjudicata;*" if not, then the following questions arise:

1. Is the State entitled to a per centage on *all moneys* received for lands which, although entered prior to the 1st of September, 1819, were not fully paid for until after that date? or

2. Is the State only entitled to per centage on moneys received for lands *entered* subsequent to 1st of September, 1819, and thus excluding the moneys received after that date on account of lands which were entered previous thereto from the sum upon which the per centage is to be calculated:

With much respect, &c.,

D. C. GODDARD,
Acting Secretary.

Hon. REVERDY JOHNSON,
Attorney General.

H.

ATTORNEY GENERAL'S OFFICE,
November 21, 1849.

SIR: In the case of the Alabama five per cent. account, which you have submitted to this office, the opinion I have formed on the preliminary question renders it unnecessary to examine the particular inquiries you have propounded. These, I think, are not now to be considered open questions. The practice of the treasury in cases precisely analogous has conclusively settled them, as far as the accounting officers are concerned.

A different doctrine would result in nothing but doubt and uncertainty in the administration of the department. Uniformity of decision and the consequent equal dealing with all parties having transactions with it would be frustrated. The law of each case would depend upon the opinion of the particular accounting officer of the day. Nor, even during his term of office, would uniformity be attained. His own judgments could not be more binding upon him than the judgments of his predecessors. He might go counter to either, and thus make the right of parties depend upon the particular opinion he may entertain when his decision is, in each instance, applied for.

The injustice of such a doctrine is too obvious to require illustration. In cases of claims upon the Treasury legal certainty is as desirable and necessary as in other cases. Official discretion inconsistent with such certainty is not, therefore, to be permitted. The law of the case, when a statute is involved, is to be ascertained by its prior practical construction. It is just what it has been construed to be. If that construction is erroneous it ceases to be binding on the department only when the judiciary shall have so decided, or the legislature have corrected it. I do not mean by this to say that a single hasty decision is conclusive; but that a long course of practice, or a judgment upon the very point by the head of the department before whom it is clearly presented, is, and should be, conclusive. The opinions of my predecessors in several instances are clear to this effect, and it will be found, also, substantially sanctioned by the Supreme Court, in the case of The United States *vs.* The Bank of the Metropolis, 15 Peters, 400, 401.

This principle is, in my opinion, decisive of the present case.

Alabama claims to be allowed the per centage of five per cent. of the net proceeds of the lands of the United States lying within her limits received by the United States on sales made before as well as after the 1st September, 1819. The title depends upon the 3d clause of the 6th section of the act of the 2d of March, 1819, (111 Stat. at Large, 491,) under which the Territory became the State of Alabama.

The language of the clause, as far as it is material to state it, is this: "That five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of September, eighteen hundred and nineteen," &c., "shall be reserved for making public roads," &c., "of which three-fifths shall be applied to those objects within the said State, under the

direction of the legislature thereof, and two-fifths to the making of a road or roads leading to said State, under the direction of Congress."

The present Commissioner of the Land Office is of opinion that the per centage thus reserved is only upon the proceeds of the described lands, which lands were actually for the first time sold after the 1st September, 1819. The agent of the State contends that it not only applies to the proceeds of such subsequent sales, but to all the proceeds of sales made before that date when any of the payments were made afterwards As an original question, I do not propose, as I have stated, to express an opinion upon it, the point involved being, as I think, definitively settled.

In the first place, before, as will be hereafter particularly stated, it was distinctly brought to the attention of the head of the department, and by him adjudged, it had been practically decided by the course of the accounting officers, under laws concerning other States of precisely the same character, and through an unbroken series of years. The practice was this: to allow the per centage upon all receipts of the sales realized by the United States, whether such sales were made before or after the prescribed period.

It seems to have been considered that, looking to the spirit of the provision and the important objects to be accomplished by it—objects as important to the United States as to the particular State—the subsequent receipt of the proceeds of the sales was what Congress contemplated, irrespective of the particular period of the contract of sale.

For some purposes, and, to a certain extent, until the purchase money was paid, the United States continued to be the owners of the land agreed to be sold. The legal title remained, of course, in them, to become perfect and divested of all equity in the purchase in the contingency of his failing to complete his payments. In that event, the land reverted to the United States, and became theirs in absolute property. It was also, perhaps, thought, and it may be properly, that the day limited was with reference to the receipt of the proceeds, and not the mere contract of sale. When sales had been made and the amount paid into the treasury, or to be paid within the designated period, it might have applied, or have been designed to be applicable, to the ordinary wants of the government, and relied upon accordingly. Upon such amounts, therefore, it was not the purpose of those provisions to allow the per centage.

But as regards receipts thereafter to be realized, no such reasons perhaps existed, no matter whence realized, whether from prior or subsequent sales, could apparently make no difference. They were not appropriated to any particular objects connected with the ordinary wants of the treasury, and could therefore be as well subjected to the per centage as if the States themselves were made after the time prescribed The question, perhaps, was not thought so obvious originally by the then accounting officers as it is thought to be by the Commissioner. It is unnecessary to decide who is right. The former took a different view, and ever firmly acted upon it. Various accounts were from time to time settled in compliance with it, and, as far as appears, without

question, until the year eighteen hundred and forty-six. In that year the agent of the State of Ohio applied to have revised and settled her account with the treasury of the per centage reserved to her by the 3d clause of the 6th section of the act of 30th April, 1802, (II Stat. at Large, 175.) This revision was had, but before being finally acted upon the then Commissioner of the Land Office, James H. Piper, on the 17th of August, in that year, addressed a letter to Mr. Walker, the Secretary of the Treasury, stating distinctly the principles which had governed the revision, and that one of them was this:

"When payments were made, before Ohio was admitted into the Union, on lands which were fully paid for *after* she was admitted, such prior payments have been excluded from the calculation, because at the inception of the sale Ohio was not a State." And concluded his letter in these words: "*These principles are respectfully submitted for your consideration and* DECISION."

The point stated which I have quoted, it will be seen, involves the very one before me, and covers the whole ground respectively maintained by the present Commissioner and the agent of Alabama.

Ohio contended that when any portion of the proceeds of a sale made before were received after her admission into the Union, she was entitled to the per centage upon the entire proceeds of such sale, and not merely upon the portion afterwards paid. The then Commissioner, in conformity with the prior usage, allowed it upon the latter portion, but denied it upon the former. Mr. Walker approved the decision of the Commissioner in this, as well as in the other points submitted by him.

This approval decided, and was intended to decide, the very question. The account was then settled accordingly, and afterwards a like settlement was made with the analogous claims of the States of Indiana and Illinois.

The reservations of this per centage made to each of these three States by the several acts providing for their admission into the Union were made in terms almost identical with those in the Alabama act of the 2d of March, 1819. It is therefore obvious to my mind that it would be great injustice to apply a different rule in settling with her.

Nothing is more to be desired than equality of right in all the relations subsisting between the States and the general government. Congress in these several acts, as well as in those for the admission of Louisiana, Mississippi, Missouri, Arkansas, Michigan, and Florida, in the reservation made to each of them, evidently aimed at such equality. They are in all made in nearly the same words. There is certainly do diversity which can even be tortured into a different meaning.

Alabama, as well as the States I have just mentioned, is entitled to the reserved per centage precisely to the same extent and upon the same grounds as were Ohio, Indiana, and Illinois. The decision, therefore, on the settlement with these States gives, as far as the point before me is concerned, the law of the claim, and that is, that Alabama is entitled to have brought into the account between her and the United States all the moneys received by the latter from and after the 1st of

September, 1819, from the sales of lands in question, whether such sales were in fact made before or after that date.

I have the honor to be, respectfully, sir, your obedient servant,

REVERDY JOHNSON.

Hon. THOMAS EWING,
Secretary of the Interior.

I.

[Enrolled.]

Joint memorial to the Congress of the United States relative to the two per cent. fund.

Your memorialists, the general assembly of the State of Alabama, respectfully represent to your honorable bodies that, by the act of Congress for the admission of this State into the Union, passed March 2, 1819, it was provided that five per cent. of the net proceeds of the sales of public lands lying within this State should be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths were to be applied to those objects within the State, under the direction of the State legislature, and the remaining two-fifths to the making of a road or roads leading to the said State, under the direction of Congress.

No appropriation, as we would inform your honorable bodies, has ever yet been made by this State of the three per cent. fund under their control, mainly for the reason that it was not required to furnish us with good common roads. It was not sufficient to accomplish any great work of internal improvement of general interest to the State, and our legislature has been unwilling to expend in making, or rather attempting to make, a great number of improvements of a purely local character. It has been attempted to be distributed in that way, but the legislature has uniformly resisted the attempt. It has been carefully husbanded by the State, at interest, until it now amounts to the sum of $383,463 50.

No appropriation, we believe, has ever yet been made by Congress of the two per cent. fund placed under the direction of Congress for making a road or roads leading to this State. That fund must now amount to near two hundred and fifty thousand dollars. The joint fund would now amount to more than half a million—a sum sufficient, with a further appropriation from the State, to accomplish some great work of general interest to the State, and to the whole Union, in a greater or less degree.

The time has passed when any part of the fund is required to make roads leading to this State. We are now surrounded on all sides by States long since settled, and have good roads leading to and from us in every direction, made and kept in order under the State authorities.

In consideration of the premises, we respectfully ask your honorable bodies to pass a law transferring to the State of Alabama the two per cent. fund set apart for this State, to be expended in the manner directed by the act of Congress for the admission of Alabama into the Union, in regard to the three per cent. fund, and under the direction and authority of the State.

Be it resolved by the senate and house of representatives of the State of Alabama, in general assembly convened, That our senators and representatives in Congress be instructed to use their best exertions to accomplish the object contemplated by this memorial, and that the governor of this State be requested to furnish each of them a copy of the same, to be laid before their respective houses.

A. P. BAGBY,
Speaker of the House of Representatives.
HUGH McVAY,
President of the Senate.

Approved December 23, 1836.

C. C. CLAY.

TUSCALOOSA, *December* 31, 1856.

I certify the above is a correct transcript.

T. B. TUNSTALL,
Secretary of State.

Synopsis of contents.

Origin of claim; admission compact of State.

The States surrender waste lands and taxation for five years.

The States receive therefor 5 per cent. of proceeds of lands sold.

Strong reasons why per centage should be punctually paid.

The State unexpectedly held to abstain from taxation for ten to seventeen years.

Causes of this serious enlargement of a deprivation of tax income.

Manner in which the United States performed their part of compact.

Instances of their default to Alabama and other States.

Errors in accounts current of all the States.

The omission therefrom of one large item of proceeds altogether.

This omission, and the errors in the current accounts, only one part of default.

United States also withheld for twenty-two years admitted dues, ($238,000,) but interest not claimed on this item.

Punctuality as much an essence of contract as *payment.*

The States entitled to their per centage the moment the purchase moneys are received in the treasury.

Reasons for it, from compact.

Reasons for it, from law.

Reasons for it, from general principle.

Nature of the present claim for interest on deferred payments.

But should this fail, the State then entitled to another and distinct one; for repayment of moneys paid to the United States in error, and which were not due.

Reasons why the United States should pay interest on deferred payments.

Difference between this and ordinary claims.

Its payment consistent with governmental usage and law; Attorney General's opinion.

And also consistent with congressional action; cases in point.

And also due to the State, because the measure of dealing with all the other States; instances of.

And also consistent with law of nations and American law; authorities therefor.

Difference between this and Galphin claim.

Conclusion.

Exhibits.

A—Claim arithmetically exhibited.

B—Statement of moneys erroneously paid by Alabama to the United States.

C—Mr. Wirt and Commissioner Meigs as to State taxation.

D—Mr. Taney as to right of officers to pay interest.

General statement of the claim of the State of Alabama on the United States.

By the third clause of the sixth section of the compact made with the State of Alabama on her admission into the Union, 2d March, 1819, it is stipulated "that five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the 1st day of September in the year 1819, after deducting all expenses incident to the same, shall be reserved" for internal improvements, "of which three-fifths shall be applied under direction of the legislature thereof, (the State,) and two-fifths under the direction of Congress."

By the third section of the act of 3d May, 1822, it is enacted "that the Secretary of the Treasury shall from time to time, and whenever the quarterly accounts of public moneys of the several land offices in the State of Alabama shall be settled, pay three per cent. of the net proceeds of the sales of the lands of the United States lying within the State of Alabama," &c., "to such person or persons as may or shall be authorized by the legislature of the State of Alabama to receive the same."

A subsequent act surrendered the two per cent. fund also to the State.

Under the foregoing stipulation and provision the United States made several adjustments of the accounts of lands sold in Alabama, and from time to time allotted to the State certain sums alleged to be the full amount due to the State. In 1848 the State had reason to distrust the accuracy of these settlements, and her legislature passed an act for the appointment of an agent to revise them. On this revision at the Treasury Department, it was ascertained and admitted

that $103,991 20, which had accrued to the State between the years 1820 and 1831, had not been paid, though unquestionably due; and this sum was therefore paid in January last.

The State, pursuant to a late act of her legislature, now claims interest on this deferred payment. Freely admitting that, as a general rule, the United States are not liable to interest, and ought not to pay it, yet the State, in common with all the officers of the government, and every Congress since 1776, is also aware that there are exceptions to the rule. It is undeniable that cases occur in which principle and usage demand the payment of interest by the United States as the due measure of justice. Numerous precedents exist of this practice.

Alabama claims that hers is a case of this peculiarity. She asks but that which is strictly just. Although injured by detention of moneys which were hers by purchase and payment of consideration, yet she would silently submit to the loss did she not also feel it right that she should appeal to national justice. To it she does appeal, not for a favor, but a *right;* a right, if purchase and payment on the one hand, withholding and injury on the other, combined with precedent, principle, and the highest usages of the country, *can* create a right against a power which is liable only through the spontaneous action of her own representatives.

Exhibit "A" sets out the particulars and arithmetical data of the claim. Should it, however, fail to receive the anticipated recognition of Congress, then the State presents another and entirely distinct claim; one which she would not advance but in case of the denial of her prior claim. This secondary one *none will contest.* It is merely for *re*payment to the State of moneys which she overpaid to the United States through the error of the latter; moneys which she did not owe, and which are, in truth, her property in the United States treasury. The particulars of this matter are given in exhibit B.

With this brief outline of the claim under consideration, we proceed to its statement "in extenso" in the following argument:

Argument.

The claim of Alabama, seeking a just compensation for wrong and injury, may at first seem a matter of exclusive interest to herself; but it will soon appear that, in asserting her own rights, she advocates also a great principle for all the States, but especially for those who, like her, have compacts with the United States containing mutual stipulations. Her claim presents grave questions. It involves the consideration of the extent of *practical* obligation imposed on the United States by their own compact; whether they may leave *their* covenants unperformed; and if unperformed, and injury results, whether the injured State is to receive any, and what, compensation.

The claim of Alabama arises under the compact of March 2, 1819,

made upon her admission into the Union. It contains the provisions common to new States. Among these are the mutual stipulations, which had their being in the early policy of the United States. This policy was suggested by the condition of the country at that day. The federal government found itself possessed of a vast, and, except by the Indian, an unpeopled territory. To encourage settlement on the public lands, to swell the treasury by their sale, and to build up new States, was deemed a wise policy. As Territories passed into States, and as star after star was added to the Union, public burdens decreased, and an additional pillar was placed under the common fabric.

Hence arose the policy found in the admission compacts of nearly all the new States, commencing with Ohio, in 1802. This policy consisted in something to be done by the State on the one side, and the United States on the other. The State was to surrender to the United States all waste lands, and to abstain from taxing public lands for five years after their sale.

As an equivalent therefor, the United States were to pay the State five per cent. of the net proceeds of land sales, for roads and other improvements—three-fifths to be expended by the State, and two-fifths by the general government. In some instances the whole five per cent. was under the control of the State.

The exemption from taxation for five years, and the pledge of one-twentieth of his purchase money to the making of improvements in his State, induced the emigrant to purchase, while the State's per centage stimulated her also to promote the sales of public land.

The wisdom of this policy is best commended by its success. It is continued to this day; and out of two hundred and forty-five millions of acres of public lands, $94,571,339 have passed into the public treasury since the origin of the land system.

These mutual stipulations were obviously the *equivalents* for each other. The United States swelled her treasury at the cost of the State, but agreed to compensate her by a per centage. On the other hand, the State was enriched by this pledge of one-twentieth of the proceeds of land sales; but it was no gratuity; she *purchased* it, and dearly too. Taxation is the highest attribute of sovereignty. Its exercise is necessary to State existence; and in waiving it, the *State paid just that amount of bonus to promote the sales of public lands.*

For the performance of the covenants of the United States no security was given but that of their plighted faith. Nothing, however, was left to the faith of *the State.* Due performance by her was secured beyond the possibility of hazard. The prohibition of taxation, when assented to by Alabama, was an impassable barrier to its exercise. An attempt to tax earlier could not be enforced. But on the United States no such iron compulsion rested. *Good faith* was the only guaranty given to the State, and Alabama now cites that faith to respond to her appeal to the Congress of the nation.

The claim to this good faith is greatly strengthened by the fact that the "five years" of non-taxation (as stipulated in the compact) was unexpectedly swelled to a period ranging from ten to seventeen.

This extraordinary enlargement arose from the old system of sales. Lands were then sold on a credit—one-fourth paid down, the balance in two, three, and four years, with interest, and a year's grace was then added. Meanwhile the purchaser went into possession, but he did not get his patent, nor was the land deemed to "be sold" until full and final payment of his purchase money was made. The United States claimed, and enforced the claim, that the five years of non-taxation did not commence till then. If a State taxed earlier than five years after the purchaser's final payment, and sold for non-payment, the land office invariably refused to recognize the title of the tax-purchaser, and even to accept from him as a mere tax-purchaser the balance of purchase money. This doctrine and practice are set forth in Attorney General Wirt's opinion and Commissioner Meigs' report.—(See exhibit " C.")

Not one out of a hundred purchasers paid regularly. A great mass of overdue balances gradually accrued, and finally *relief laws* were enacted, extending the time of payment from 1809, year by year, to 1821. Then by other measures purchases were kept alive, so that the balances did not expire until 1831.

During this period, from the first relief law in 1809 to their expiration in 1831, large quantities of *settled* land in the fund States were deemed to be "*not sold*" until 1831, and on them the five years of non-taxation commenced to run only in that year. Yet all these lands had been settled and improved prior to 1820, and some of them ten years earlier. In fact, it is impossible to state with exactness the length to which the taxation limit enlarged itself. All that *can* be said is, that on all credit sales in Alabama the actual taxation limit was not less than ten nor more than seventeen years.

This unexpected and most serious addition to the State's part of the compact adds powerful weight to the claim she otherwise has for the prompt performance by the United States of the *compensating covenant.*

Having thus introduced the origin and nature of these compacts between the federal government and the fund States, and having exhibited the respective positions of the parties, it is proper next to inquire to what extent the United States have performed *their* covenants.

The facts—facts of record—compel the assertion that the United States have been in default, in continued and unjustifiable default, to most, if not to all, the fund States. They postponed their per centage, and when paid the amount was not the true sum. For many years the moneys due to States were retained in and enriched the national treasury. Errors of singular uniformity in favor of the United States and against the States characterize their *ex parte* accounts of this fund; and, finally, a true settlement was attained by the States only through an expensive agency.

These remarks apply with most force to the early days of the government. In modern times it is cheerfully conceded that the departmental officers have been, and now are, faithful and accurate in their accounts. But the evidence of facts justifies the charge that has

been alleged. Within the last four years five of the fund States appointed agents to revise their accounts. Four of these accounts have been fully restated, and one of them partially. Each restatement disclosed the same facts and the same result. Error was in every account. Just credits had been withheld, and balances were found due to all, to wit:

To Ohio	$65,749 09	
To Indiana	49,522 70	
To Illinois	26,025 63	
To Mississippi	2,576 89	(partial statement only.)
To Alabama	103,991 20	

In the case of Alabama, the last of these revisions, a very serious fact respecting all these accounts was first ascertained and admitted. *It was the entire omission of a large item of the proceeds of sales.* Its magnitude may be inferred from the fact that in the case of Alabama it amounted to $2,131,105 06. The proceeds thus omitted were payments made under the relief laws. When the price of land was reduced from $2 to $1 25 per acre, purchase moneys that had previously become forfeited on account of failure of full payment were in many cases restored, to enable the purchase to be completed at the reduced rate. The purchaser was also empowered to relinquish one or more tracts of land on which partial payments had been made, and to apply these payments to complete the purchase money on a tract retained. The payments thus made by restored forfeitures and relinquishments were wholly withheld from the account of sales; and although many millions of acres in the several States were paid for with moneys from these sources, the States received no per centage thereon. They were not even aware of such proceeds until the Alabama agency discovered and disclosed the fact. In consequence of it, Ohio, Indiana, Illinois, and Mississippi, have again restated, or are now restating, their accounts, to add to their former balance the sums which are also their due under the discoveries of Alabama. *She* is, therefore, entitled to the consideration of her sister States for the establishment of this common right.

The error that omitted these proceeds receives strong comment in the fact that out of four departments of the government which had jurisdiction of the Alabama principles,* not one officer questioned the propriety of inserting them.

These grave facts, perpetuated on the government records, sustain the allegation of default on the part of the United States in the performance of their fund obligations. And is there excuse for this failure to render the just account that is now acknowledged? The United States possessed all the requisites for a fair adjustment; lands, sales, officers, books, were all their own. Complexity there was none. A simpler matter of account cannot be proposed. Why, then, has the creation of an expensive agency been necessary to the attainment of justice by the States? This pregnant fact, taken in

* The Land Office, Secretary of the Interior, Attorney General, and First Comptroller.

connexion with the uniformity of error in favor of the United States, naturally suggests the inquiry whether there be any, and what, remedy for these many wrongs.

Before proceeding to this consideration, however, we will recapitulate our argument thus far.

We have shown—

1st. The origin of the "fund" compact, to wit, in the policy to promote the sale of public lands.

2d. That the *five per cent. fund* and the *non-taxation* were the equivalents for each other.

3d. That the compact, assented to by the State, effectually secured the performance of the non-taxation stipulation.

4th. That the United States so construed their land laws as to extend the five years of non-taxation to a period ranging from ten to seventeen years.

5th. That the States had no security from the United States other than their plighted faith for the performance of the compact on their part.

6th. That the claim of the State to this fund was enhanced by the unexpected and serious extension of the non-taxation period.

7th. That the United States had the adjustment of the account entirely to themselves.

8th. That the keeping of the fund account was a simple task; that palpable errors existed therein; among which was the entire omission of one distinct class of proceeds, amounting, in Alabama alone, to over two millions of dollars.

9th. That the facts sustain a case of grave and inexcusable default on the part of the United States.

It will be observed that the foregoing remarks are justified by admitted facts. The charge which they sustain is, the stating of erroneous accounts, and the omission therein of appropriate items. To this charge is now to be added another, and, if possible, a greater one, to wit, the withholding for many years the sums which their own accounts showed to be due to the State.

The compact with Alabama entitled her to an expenditure of 5 per cent. in improvements for her benefit—three-fifths at her own discretion, and two-fifths by the United States. The meaning of the compact clearly is, that the payments shall be made *immediately*—as fast as moneys for land sales come into the treasury. The language of the compact is, "that 5 per cent. *of* the net proceeds shall be reserved," &c., not 5 per cent. *out* of the proceeds, or arising from them, but an actual hypothecation of one-twentieth of the original proceeds themselves. This language contemplated an immediate ownership in, and of course an *immediate use of*, the fund as soon as it could conveniently be paid over. That it was so understood by the parties is evident from the provision made by law for executing it. In May, 1822, an act executory of the compacts with Alabama and other fund States was passed, directing the Secretary of the Treasury "from time to time, whenever the quarterly accounts of public moneys of the several land offices should be settled," to pay the 3 per cent. Therefore, in

order to *faithfully* perform the compact, *prompt* payment was requisite. Mere payment at some undefined future time would not satisfy it; nor would anything short of actual payment on the quarterly adjustment of the accounts.

This was also just on general principles. If the 5 per cent. was really to be an equivalent or substitute for taxation, its time of payment ought to take the place of the tax, thus to aid the State, when her treasury was deprived of its legitimate resource by taxation.

Every settlement on public lands brought with it increased burdens to the State. The new settler and his family swelled the population which claimed the protection of the State. In proportion to the population must be the domestic representation, the judiciary, police, roads, &c., and other incidents to society. All these are charges on the State. Her resources lie in *taxation*. When this right is unfettered, she can easily provide for her wants by an equable taxation on property. The increase of population, in this case, does not augment the public burdens, because the new settler tenders for taxation his new home. He brings with him the elements of a self-discharge of the cost which attaches to his citizenship. In such a case, all is well; but in that of *taxation fettered*, as in the case under consideration, the equilibrium is lost, and the State must look elsewhere for relief from the burdens of an increasing population. The compact professes to substitute for taxation 5 per cent. of the settler's payment; but it is no substitute, if susceptible of indefinite delay. Prompt payment—payment *at the very time* when the settler augments the public burdens, and when his property, otherwise taxable, is exempt under the contract, is the very essence and soul of its stipulations.

Thus sound principle concurs with the compact and with the law of 1822 in establishing immediate payment as one of the requisites called for by a faithful performance of the compact.

Besides this, however, mere payment does not satisfy an obligation, unless made on the day when due. Money is more valuable to a party at some periods than at others. In early years the State's means are small. She has much to do, and all to be done at once. Then her moneys are most beneficial, and the withholding of them the most injurious; and if wilfully withheld by an able debtor, she is fairly entitled to compensation, as the measure of the damage sustained by the detention, and of the benefit derived by the debtor from the use of her money.

Let us apply these principles to the case of Alabama. It has been seen that there was error and wrong in respect to her three per cent.—the portion payable to the State. Do we find in the performance of the two per cent. branch of the compact anything to redeem the evils of the other? Far from it. On the contrary, there the wrong is even deeper—the evil yet greater. The United States agreed to expend the two per cent. fund, and to do so as fast as received at the treasury. Yet for twenty-two years that fund lay in their treasury unexpended, save for the United States wants; and these the years of Alabama's greatest need of commercial facilities and her smallest means for their construction! Though error existed

in the three per cent. account, a part of *it* was paid, but not a dollar of the two per cent. until 1841 and 1842. Its amount as then adjusted at the treasury was $238,405 21. This large sum, purchased by Alabama for a specific use by her lost taxation, had up to this period only enriched the United States.

It might be here asked, ought not the United States to render compensation for this withholding of a trust fund from the cestui que trust? but Alabama desires to prefer no claim that is not well assured by the highest principles of justice. She therefore passes by this item, waiving any claim upon it, and alluding to it only as proof of the serious default of the United States in the time of payment of acknowledged dues.

The claim she presents is limited to that portion of her purchased fund which was found due to her by the late restatement of her account in the Treasury Department, and paid in January last. It arose from introducing into the account the previously omitted payments for lands made by restored forfeitures and relinquishments. Their gross sum exceeded two millions of dollars. The State's per centage on it was $103,991 20. She now claims interest on the deferred payment of this balance. For statement thereof see exhibit A. The precise amount of each payment, with the date of accrual to the State, are set out distinctly in the restated account. One half accrued in 1821, and the other half between that and 1831—an average period of twenty-five years. During these twenty-five years, Alabama often demanded of the United States her dues from this fund. Not receiving them, and unable to postpone her public improvements, she was finally coerced to raise the means by the issue of State bonds, bearing interest. The fact of her wants is thus evidenced. Meanwhile her non-taxation stipulation was extended from five to ten years, and in most instances to seventeen. Her waste lands passed to the United States, and she herself was held to the very letter of strict performance. And to crown the whole, is the fact that the United States, becoming possessed of the bonds of Alabama, issued in 1836, to the amount of one million six hundred and ninety-seven thousand dollars, which bonds were issued (in part) in consequence of the United States' default, have invariably demanded and enforced the prompt payment of semi-annual interest thereon, from their issue to this day. Yet during all this time the United States were in fact the debtor, and Alabama the creditor, to a certain extent.

This is a very important consideration. It alone is deemed to be decisive for the present claim. Let us look at the facts, and apply to them the common and indisputable rules of all dealing. In 1836 the United States became possessed of certain bonds of Alabama, and have ever since received interest on them at six per cent. But in 1836, and for many years prior, the United States owed Alabama $103,991 20, (in round terms $104,000.) Consequently, Alabama was entitled, in 1836, to have that sum endorsed on the bonds, and thereby to have so much of the principal absolutely and forever discharged.

The account on these bonds would then have stood thus:

Total amount of bonds	$1,697,000
Less by amount due Alabama, say	104,000
Balance due, and on which Alabama is to pay interest...	1,593,000

By the error of the United States this indisputable credit was not given; and in consequence Alabama was wrongfully held to pay interest on the face amount of her bonds, and has been thus held to pay from 1836 to the present time. Consequently, she has overpaid the legal interest by paying interest on this $104,000, which she did not owe. The semi-annual interest on that sum, at six per cent., is $3,120. Each payment thereof was wrong. Twenty-eight of them have been made. In a schedule hereto attached, marked exhibit B, is contained the account of these illegal overpayments.

If, therefore, the United States should repudiate altogether the payment of interest upon the balance due the State, yet here is another wholly distinct ground of claim by Alabama—it is to get back moneys wrongfully overpaid by her to the United States.

But it is contended that every good principle, and the usage of the United States, entitle her to interest on the $104,000 for the entire period of its being due.

The United State always charge interest upon indebtedness as an indispensable element of account. They have so charged Alabama and the other fund States; and when the latter owed interest on their bonds in the United States' possession, the United States not only charged interest, but actually applied the State's per centage to discharge the interest; and that, too, although the per centage was not an open sum, but a trust fund, pledged to a specific use, and one in which every State in the Union had an interest and title as well as the indebted State.

Let these rules work both ways. As the United States charged Alabama interest on a presumed indebtedness, why should not they, in turn, pay her interest on an actual one?

As the United States charge the fund States interest, and detained their per centage to pay it, why should not the United States, in turn, pay interest on their per centage when wrongfully detained?

When Alabama paid interest wrongfully on money she did not owe, why should not the wrong be made right by the United States returning the money wrongfully received?

To answer these questions otherwise than affirmatively would be to sink the sovereignty of the States in that of the United States; for the United States cannot escape from the force of these established rules, except under the plea of the prerogative of sovereignty. Are the States less sovereign, or less seized of rights than the United States, the creature and representative of them all? Nay! It is they that are the real sovereigns, and the actual source of political life and power in the United States.

And why should not the United States pay, and Alabama receive interest? Her right to the principal was conceded, and it has been

paid. Her right to it twenty-five years ago has also been conceded. Her demand of it, the injury inflicted upon her by its detention, the errors of the United States, and their use of her money, are all alike unquestioned. Why, then, should not interest be paid? Interest is at once the measure of, and compensation for, the damage; the equivalent to the one party for detention, paid by the other for the use of money.

Why, then, should it not be paid? Is it that its payment in this case would conflict with the practice of the government? We will examine the subject, and prove that, so far from conflicting, it would be in strict conformity with its theory and practice under every administration.

The payment of interest by the United States has been often discussed, and has recently undergone so thorough an investigation that it is unnecessary here to go into the subject at large. A few cases will be given, and remarks made upon them, to show that the case of Alabama comes well within the rules which sustain the payment of interest, and is distinguisned by strong characteristics from those cases which are without them.

The great bulk of opinion and decision respecting the payment of interest by the United States has been given under circumstances not applicable to the present case. Nearly all relate to the allowance of interest by the departments or executive officers. It is their power that is chiefly examined, and their allowance of interest that is canvassed and censured. Congress may be jealous of the exercise of so dangerous a power by merely executive officers, but Alabama seeks congressional and not departmental action.

Another marked distinction between this and ordinary cases is the fact that the latter are the claims of individuals, unknown to the government until presented, vouched, and allowed. They then, for the first time, become a debt against the United States.

The case of Alabama is in strong distinction. It is the claim of an equal and a sovereign. It arises under a treaty compact, (for these compacts are in the nature of treaties, and are entitled to the usages appurtenant to compacts between sovereignties.) Its existence is made known by the treaty. It is secured by law. It begins where the other class of claims ends, being founded on a debt against the United States under a compact, and a law executory of it. The United States are bound to take notice of it, and to provide for its due payment, as for any other national obligation, even without special demand. It is a question of right arising from a compact, and not an original demand. Therefore, rules properly applicable to individual cases fail to reach this. Nothing is common to the two, except that both are called by the common name of "claims."

The general rule applicable to claims may be gathered from the opinion of Attorney General Taney in Major Thorpe's case, (p. 841.) (Attorney General's opinion.) Its substance is, that there is no legal or constitutional objection to the allowance of interest by executive officers "*if justly due*," but that the cases are rare in which interest

can be "justly due," the United States being presumed to be always ready to pay. (For this opinion see exhibit D.)

It follows that the converse of the proposition in this opinion must be equally true, and, therefore, that there *may be* claims where interest is "justly due," and that the officers ought to pay interest on them. By referring to the opinion, it will be seen that this conclusion is inevitable from its reasoning, and that this class of cases are those in which the claim in proper shape is before the government, and delay of payment is caused by the default of the United States.

The test upon which the exemption of the United States from interest is made to depend is the fact, which of the parties delayed the payment of the principal? Who was in default? In the case under consideration, Mr. Taney reasons thus: The accounting officers are not forbid to pay interest if it is "justly due." But the United States are always ready to pay when a claim in proper shape is before them; *therefore* it can rarely happen that they are "justly chargeable with interest." Why? Because it is the fault of the claimant, says the opinion. Hence, then, it is the *fault* that decides the justice of an interest demand.

When, therefore, the United States *are* in fault; when the claim in proper shape *is* before them, and that the delay of payment is theirs, the case is one of those "rare" occurrences which the Attorney General deemed possible, though not likely, where the United States are "justly chargeable with interest;" and it becomes a subject of demand so just that even the accounting officers might pay it.

It scarcely needs to be remarked that the case of Alabama is precisely one of those rare exceptions. Demand for her due, apart from special demand, was always before the government under the obligations of a treaty compact and the provisions of an executory law. This continued notice and demand rendered any non-payment a clear case of laches. The United States themselves admit the perpetual obligation of this demand by making adjustments and payments from year to year of the per centage without special demand.

The claim is therefore one which, in the opinion of Chief Justice Taney, even the accounting officers ought to pay; and if so, then, *a fortiori*, is Congress bound to pay it.

We will now consider another case.

On page 542, Attorney General's opinions, is found an opinion of Mr. Wirt on certain reciprocal rights and duties of the government and the States. It was given on the claim of Virginia for interest, under an act of Congress which guarantied payment of her expenses during the war with Great Britain with interest. His reasoning is, that where the United States fail to do a thing to the performance of which they are bound, and the State does it from necessity, and obtains the means by borrowing on interest, the United States are bound to make the State good in principal and interest.

Here, again, Alabama presents a case of entire analogy. The United States were bound to pay her moneys for internal improve-

ments. They failed to do so. The improvements were indispensable to the State. The want of commercial facilities were as fatal to her interests as the presence of an invading enemy to Virginia. She was therefore compelled to make the improvements in self-defence. She borrowed money for the purpose, and paid interest for its use. According to Mr. Wirt, then, "the United States having failed to make such provision, and the State having to defend itself" (make the improvement) "by means of her own resources, the expenditure thus incurred forms a debt against the United States which they are bound to reimburse;" and as "the State has been obliged to borrow," "and pay interest, such debt is essentially a debt due by the United States, and both the principal and interest are to be paid by the United States."

We next invite attention to a remarkable case in which the United States interwove, in the code of her own polity and of national usage, the principle that the payment of interest was indispensable to the just satisfaction of an acknowledged debt, under circumstances and reasoning of striking applicability to the present case.

The case cited is found in Mr. Wirt's opinion (page 560) on the convention of St. Petersburg. This was an award by the Emperor of Russia on certain questions between England and the United States arising out of the war of 1812. It awarded "just indemnification" to the United States for slaves and property carried away during the war. The question was, whether the "*just indemnification*" included *interest* as well as principal, or whether the indemnity stopped at the naked value of the property. The British commissioner contended against interest. Mr. Wirt reasons thus:

"A wrong must be repaired in whole, if it would be indemnified; that a reparation of one-half or three-fourths would not be enough; that the taking away the property originally was wrong, and the continuance of the possession of the property was an additional wrong; that the property was detained eleven years in violation of a treaty; that it is not consistent with the usage of nations to redress wrong by a mere return of the naked value, without interest, even of belligerent nations, far less of friendly powers;" and he concludes by deciding that interest is a necessary part of the indemnity.

The facts of this case are substantially those of Alabama, and the reasoning of Mr. Wirt applies with unanswerable strength. There was a treaty compact between the United States and Great Britain; so between the United States and Alabama. Great Britain violated the one, the United States the other; one by commission, the other by omission. The one did what she ought not to have done, (take property;) the other left undone what they ought to have done, (pay money.) In both cases there was equal transgression. The United States claimed to be made whole by Great Britain; Alabama now claims the same of the United States. The original act of Great Britain was decided by the award of the Emperor of Russia to be a wrong committed in 1815. The original act of the United States was decided by her own officers, in their official capacity, to be a wrong committed in 1821. Great Britain and the United States both admit

the wrong, and offer reparation by payment of the naked value at the perpetration of the wrong, *i. e.*, the principal. But Mr. Wirt says the *detaining* was an equal wrong with the original act; that the parties lost the use of their property, and that the only proper indemnity is reparation for the *whole* of it—for the original and the *continuing* wrong—and that interest is a necessary part of the indemnification under the law of nations. Accordingly, the United States demanded interest of Great Britain, and finally enforced it—enforced it as the due measure of national redress of wrong, as established by usage and principle. And such measure of redress Alabama confidently expects to receive from the United States. It is not to be believed that the United States will now *reverse* great national principles for which they successfully contended, because of their own *reversed position* from *creditor* to *debtor*. Were the United States to reverse a great principle thus solemnly and conspicuously settled, and to reverse it here where its rule is against them, such antagonist action would necessarily impair confidence in the faith of the government, and destroy that fixity which is so essential in the principles and procedure of government.

The foregoing cases show that the claim of Alabama for interest is well sustained by the principles and usage of our government.

We will now adduce another class of cases to show what has been the action of Congress.

As might be expected from a body possessing the power, almost unlimited, over claims, its action will be found more liberal than that of mere executive officers. Liberality, generosity, and an enlarged equity, no less than strict justice, characterize their acts.

The cases cited will be those only in which interest has been paid as the due measure of relief.

1st. Where money is the basis of relief, interest is added as a part of the remedy.

Smith and Gates had purchased lands of the United States. Title proved defective. Principal and interest were allowed.—(U. S. S., vol. 6, p. 72.)

Joshua Sands, collector, was sued for vessel seized; he claimed for damages of the United States; he was allowed interest and costs.—(Vol. 6 U. S. S., p. 150.)

John Thompson; interest allowed on money advanced, and also on services.—(Vol. 6, p. 208.)

William Tharpe; interest allowed on claim for services and bill of charges.—(Vol. 6, p. 476.)

Thomas Richardson, a sutler, to protect himself, he took out letters of administration to soldiers who owed him. Repaid *with interest*, to extent of funds due to soldiers.—(Vol. 6, p. 558.)

Marius G. Gilbert; the same.—(Vol. 6, p. 621.)

2d. In cases of accounts with the United States, and also where a balance is found against the United States, Congress pays interest. (Such is the case of Alabama.)

In 1802, Arthur St. Clair; his accounts referred to accounting officers, and balance paid with interest.—(Vol. 6, p. 16.)

Stephen Sayre, 1807; his account settled and interest allowed.—(Vol. 6, p. 65.)

T. Barclay, 1808 ; the same.—(Vol. 6, p. 72.)

Wm. Baynham, 1810 ; the same.—(Vol. 6, p. 89.)

Moses Young, 1810 ; the same.—(Vol. 6, p. 89.)

J. Wheaton, 1806 ; balance due him by award, $1,600 ; interest from 1807 added.—(Vol. 6, p. 166.)

R. Hills, 1819; account settled and interest paid.—(Vol. 6, p. 231.)

Wm. Otis, 1829; the same.—(Vol. 6, p. 396.)

3d. In case of unjustified detention of property by the United States, Congress pays interest to compensate for the detention. *A fortiori*, is interest due for detention of money, it being always the subject of interest, but property rarely.

John Coles, 1802; vessel detained at Gibraltar by American consul; damages and interest paid.—(Vol. 6, p. 51.)

D. Colton, 1809; vessel detained; damages and interest paid.—(Vol. 6, p. 80.)

4th. Interest is a necessary part of indemnity.

N. Green, indemnified in a certain sum, and interest paid.—(Vol. 6, p. 9, 28.)

5th. When the claim is founded on an equivalent rendered to the United States, and the United States have received value therefor, they will pay the claim with interest, even though it be barred by a contract fully performed.

Congress disregards every barrier to a compensation which is just in principle.—(See case of John Steinman and others.)

Steinman and others, in 1813, manufactured arms for the United States, under a contract accompanied by a specimen. They delivered the arms and were paid the stipulated price. In 1826, they petitioned Congress for an additional allowance, because the arms were better than was required by the contract; also, because the government had paid other contractors a higher price for same kind of articles under contracts.

Of course these petitioners had no pretence of right on which to found their claim. They had made their contract and received the stipulated price; 13 years passed away since the transaction was concluded. It rested entirely on equitable principles. But Congress entertained the claim and passed an act not only giving them the increased rate, but also interest on it from 1813.—(See vol. 6, U. S. S., p. 345.)

The cases last cited embrace the cardinal points of the Alabama claim. It, like them, is for interest. The basis of it (like point 1st) is money; like point 2d, it is a balance on account stated with the United States; like point 3d, it is a detention by the United States, but of money instead of property; like point 4th, interest is necessary to indemnify the State for injury and for interest paid by the State; and, like point 5th, the claim is founded on an ample equivalent rendered by her to the United States by the surrender of taxation.

The comparison of the cases of Steinman and Alabama is this: both rendered value to the United States under contracts; to Steinman the

United States performed in full; to Alabama they failed. Steinman bargained with his eyes open and a sample in his hand, was paid his price in full and acquiesced for thirteen years; yet Congress overlooked all but the original value, increased the price and added interest to boot. In the case of Alabama, no contract bars her. True, a contract there is, but it throws its heavy weight in her favor, and not against her.

We shall now cite a class of cases in which the United States have invariably paid interest to the States as the "just compensation" for their performance of acts which it was the duty of the United States to do. This legislative action practically illustrates and sustains the principles laid down by Mr. Wirt in the case of Virginia, and quoted on page ——. It conclusively establishes the principle that in all cases of suitable emergency, the States may discharge duties which of right pertain to the United States alone, but which they omit through laches or necessity.

But it shows more. It establishes also the principle contended for, that the States as sovereigns in themselves and component parts of the common sovereignty representing their Union, stand on a platform of equality when respectively dealing with the united body; that prerogatives which attach to sovereignties in their intercourse with individuals, are lost in the co-extensive privileges of the equal. Accordingly we find that in the accounts of the latter class, the ordinary rule that governs adjustments between individuals prevails. In their cases—the cases of equals—interest unless waived by law or contract, attaches to non-payment as an indispensable consequence. In a 2d class of cases—that of sovereigns and individuals—the equality of condition is lost, and with it the rule also. But in the 3d class the equality is restored and with it the rule is again established.

And still more, this legislation in connexion with the preceding cases shows how vast the field is from which spring the elements of demand for interest, as the due measure of satisfaction for the honor and faith of the United States. They exhibit the extent of exception to the rule, generally deemed so fixed, that the United States never pay interest, and prove that like every rule it has its just exceptions.

March 3, 1825, vol. 4, U. S. S., page 132.—Interest to Virginia on expenditures for the United States during the war of 1812.

May 13, 1826, vol. 4, U. S. S., page 161.—The same to Maryland.

May 20, 1826, vol. 4, page 175.—The same to Delaware.

May 20, 1826, vol. 4, page 177.—The same to Baltimore.

May 22, 1826, vol. 4, page 193.—The same to New York.

March 3, 1827, vol. 4, page 240.—The same to Pennsylvana.

March 22, 1832.—The same to South Carolina.

In addition to these cases are two in which the present Senate passed bills giving interest to Georgia and Maine.

A large mass of precedent has now been shown in every department of the government, all concurring in a common principle. The opinions of Attorney Generals Wirt and Taney, the practice of the government in its foreign and domestic relations, the legislation of Congress and the dealings with the States of the Union, harmonize

in establishing that the State of Alabama is entitled to interest in a case so analogous to the numerous instances cited.

It only remains to be seen what the law of nations and the policy of our own laws suggest as applicable to the case. But two authorities will be cited. Let them speak for themselves.

Vattel says: "All the promises, the conventions, all the contracts of the sovereign are naturally subjected to the same rules as those of private persons."—(Vattel, lib. 2, chap. 14, p. 213.)

The eminent jurist, Justice Story, says, in Thorndike *vs.* United States, (1 Mason's Rep., 20:) "If the present were a contract between private citizens, there can be no doubt that the court would be bound to give interest upon the contract up to the time of payment; and if by law the amount due on the contract could be pleaded as a tender or a set-off to a private debt, it would be a good bar in the full extent of the principal and interest due at the time of such tender or set-off. Nay, more: if the note or promise were made by a citizen to the government, the latter might enforce its claim to the like extent. Can it make any difference in the construction of the contract that the government is the *debtor* instead of the *creditor?* In reason, in justice, in equity, it ought to make none, and there is not a scintilla of law to justify any. If a suit could be maintained against the government I do not perceive why it would not be as much the duty of the court to render judgment in such suit for the principal and interest, in the same manner and to the same extent, as it would in the case of private citizens. The United States have no prerogative to claim one law upon their own contracts as *creditors*, another as *debtors*. If *as creditors* they are entitled to interest, *as debtors* they are bound also to pay it."

The force and propriety of this reasoning must strike every one. Were the United States then to refuse interest to Alabama they would do that for which Mr. Justice Story says "they have no prerogative," and far less have they law. As creditors enforcing interest from Great Britain under treaty and from the States under contract, but as debtors refusing to pay it, though their debt is admitted, and the instruments are the same, what would it be but to assume under the iron hand of power, the position for which the great jurist expressly declares there is neither law nor prerogative?

Such action by the United States cannot be contemplated. A dignified and honorable nation, it only needs to know the right to do it; and in their dealing with Alabama they will doubtless conclude, when they know the facts, that, in the jurist's words, "as creditors they have taken interest of the State, as debtors they are bound also to pay it."

To close this branch of the argument it only remains to notice the contrast between this and a recent case, the subject of much discussion.

The Galphin claim was originally against the Indians; then against Great Britain; next against Georgia; but, in the opinion of its opponents, never a just one against the United States. It did not originate against them, and if it lay against them at all it was only by

implication. Thus the first great element necessary for an interest claim was here *uncertain*, i. e. the actual right of claimant to the principal from the United States.

Greater contrast cannot exist than does exist in the foregoing respects between the Galphin and the Alabama claims. The latter arises from a contract with the United States—is the equivalent for a value paid to the United States. The Galphin principal was paid under a late act of Congress—as a matter of grace, say some; but, at any rate, as a matter of discretion. Alabama's principal accrued under a treaty contract, and was paid as a *right*, without congressional aid.

But the gravamen of the Galphin case was that *executive officers* paid interest without a special enactment by Congress. Its opponents do not allege that interest is not to be paid by the United States under any circumstances, or that *Congress* cannot order its payment, but they object to its unauthorized payment by executive officers as an undue exercise of power.

It is *to Congress* Alabama comes and appeals for justice. She supplicates not for *favor*, but asks for *rights*—rights admitted and long withheld; and she comes with clean hands. *Her* faith to the nation and to individuals is untarnished. She has never been behind her sister States in upbuilding and sustaining the institutions of our country, and in the early policy of encouraging the sales of public lands she has submitted to more sacrifices than any of the land States.

Would it comport with the dignity of a great nation to withhold justice in the present case? The United States demanded and received from Great Britain that justice in a similar case; they exact it from the States of the Union; they enforce it from their own citizens in all dealings with them. Is it consistent, is it *right*, that a rule should exist *always* in *favor* of a nation, but *never* against her?

Are the great principles of justice to be powerless when a nation is the subject of their application? And is this Union to protect itself behind the doctrine of the English crown, that "the King can do no wrong?"

Nay, rather let the contrary doctrine obtain; let justice be ever most inflexible, fair dealing most pure, and honor most scrupulous in the dealings of a nation, herself the asserter and the exemplar of an unswerving code of principles, as the only foundation on which a nation's *true* prosperity and glory can rest.

Respectfully submitted.

JEFF. F. JACKSON,
Agent for the State of Alabama.

WASHINGTON, *June* 25, 1850.

APPENDIX.

Exhibit A, showing the interest which the State of Alabama now claims. (See the last column of statement.)

The following statement exhibits the sums paid for lands in Alabama, with the dates when paid, but which were withheld from the fund account of the State until the restatement thereof—☞All these facts being taken from the official statement of the Treasury, now of record there.☜

It also exhibits the State's percentage on these omitted payments; the period for which it was unpaid, and the interest thereon at 6 per cent.

ST. STEPHEN'S DISTRICT.

Period when sales were made.		Amount of purchase money paid in each quarter.	State's percentage thereon, 5 per cent.	Amount of interest at 6 per cent. on State's portion, from date when due to June 30, 1850, and of 2d quarter.	
Year.	Quarter.			Period.	Amount.
				Yrs. Mos	
1821	3d qr., ending Sept. 30	$80,853 84	$4,042 69	28 9	$6,973 60
1822	3d ....do..... Sept. 30	879 76	43 98	27 9	72 98
1823	3d ....do..... Sept. 30	163 84	8 19	26 9	13 11
1824	3d ....do..... Sept. 30	4,578 97	228 94	25 9	353 55
1824	4th ...do..... Dec. 31	6,199 86	309 99	25 6	464 24
1825	1st ...do..... March 31	49,553 11	2,477 65	25 3	3,753 41
1825	2d ....do..... June 30	9,816 25	490 81	25 0	736 00
1826	4th ...do..... Dec. 31	447 84	22 39	23 6	31 49
1827	1st ...do..... March 31	610 49	30 52	23 3	42 55
1827	2d ....do..... June 30	8,840 92	442 04	23 0	609 96
1827	3d ....do..... Sept. 30	4,812 56	240 62	22 9	328 28
1828	3d ....do..... Sept. 30	310 99	15 54	21 9	20 23
1829	1st ...do..... March 31	1,449 10	72 45	21 3	92 44
1829	2d ....do..... June 30	7,214 02	360 70	21 0	454 44
1829	3d ....do..... Sept. 30	5,015 03	250 75	20 9	312 08
1831	1st ...do..... March 31	689 87	34 49	19 3	39 65
1831	2d ....do..... June 30	2,845 25	142 26	19 0	162 07
1831	3d ....do..... Sept. 30	3,746 33	187 31	18 9	210 57
		188,028 03			14,670 65

STATEMENT—Continued.

CAHAWBA DISTRICT.

Period when sales were made.			Amount of purchase money paid in each quarter.	State's percentage thereon, 5 per cent.	Amount of interest, at 6 per cent., on State's portion, from date when due to June 30, 1850, end of 2d quarter.	
Year.	Quarter.				Period.	Amount.
					Yrs. mos.	
1821	3d qr., ending Sept.	30	$249,643 40	$12,482 17	28 9	$22,107 74
1822	3d....do.....Sept.	30	2,566 43	128 32	27 9	213 40
1823	3d....do.....Sept.	30	285 48	14 27	26 9	22 74
1825	3d....do.....Sept.	30	194,815 60	9,740 78	24 9	14,464 89
1827	2d....do.....June	30	60,404 78	3,020 23	23 0	4,167 83
1829	2d....do.....June	30	41,753 46	2,087 67	21 0	2,630 46
1831	1st... do.....March	31	3,638 31	181 91	19 3	210 01
1831	2d....do.....June	30	38,638 00	1,931 90	19 0	2,202 29
			591,745 46			46,019 36

HUNTSVILLE DISTRICT.

1821	3d qr., ending Sept.	30	658,489 25	32,924 46	28 9	56,794 48
1822	3d....do.....Sept.	30	4,179 43	208 97	27 9	347 71
1824	3d....do.....Sept.	30	280 18	14 00	25 9	21 63
1824	4th...do.....Dec.	31	1,078 27	53 91	25 6	82 36
1825	1st ...do-----March	31	51,986 08	2,599 30	25 3	3,937 73
1825	2d....do.....June	30	20,773 99	1,038 69	25 0	1,558 00
1826	3d....do.....Sept.	30	9,077 43	453 87	23 9	646 71
1826	4th...do.....Dec	31	3,695 42	184 77	23 6	260 38
1827	1st ...do.....March	31	3,833 96	191 69	23 3	267 37
1827	2d....do.....June	30	30,326 48	1,516 32	23 0	2,092 31
1827	3d... do.....Sept.	30	41,315 44	2,065 77	22 9	2,819 64
1828	2d....do.....June	30	75	03	22 0	04
1828	3d....do.....Sept.	30	79 33	3 96	21 9	4 90
1828	4th...do.....Dec.	31	375 52	18 77	21 6	24 08
1829	1st ...do.....March	31	3,431 93	171 59	21 3	218 66
1829	2d....do.....June	30	57,265 67	2,863 28	21 0	3,607 59
1829	3d....do.....Sept.	30	30,013 29	1,950 66	20 9	2,428 34
1830	4th...do.....Dec.	31	150,896 43	7,544 82	19 6	8,827 26
1831	1st ...do.....March	31	16,395 70	819 78	19 3	946 71
1831	2d....do.....June	30	227,944 34	11,397 21	19 0	12,992 77
1831	3d....do.....Sept.	30	30,892 60	1,544 63	18 9	1,737 55
			1,351,331 57			99,616 22

St. Stephen's	14,670 65
Cahawba	46,019 36
Grand total	160,306 23

EXHIBIT B.

Schedule showing the moneys overpaid to the United States by Alabama.

Total principal on which the United States charged interest from 1836 to present time	$1,697,000 00
Deduct amount due at that time by the United States to Alabama, it being a good set-off to so much of the principal, but not endorsed on the bonds	104,000 00
True amount of State indebtedness	1,593,000 00

And on which sum only Alabama ought to have paid interest.

Amount of interest paid annually by the State, being 6 per cent. on $1,697,000	101,820 00
Amount of interest on $1,593,000, the *true* principal	95,580 00
Difference between the true interest and the amount paid	6,240 00

This excess of interest, $6,240, was wrongfully paid by Alabama from July, 1836, to the present time in semi-annual payments. The following table exhibits the account thereof against the United States, on the usual principles of rectifying an erroneous payment of money.

Date of overpayment.	Amount overpaid.	Interest at 6 per ct. on amount overpaid from date of overpayment to July 1, 1850.	Period for which interest is calculated.	
			Years.	*Mos.*
July 1, 1836	$3,120 00	$2,620 80	14	0
January 1, 1837	3,120 00	2,527 20	13	6
July 1, 1837	3,120 00	2,433 60	13	0
January 1, 1838	3,120 00	2,340 00	12	6
July 1, 1838	3,120 00	2,246 40	12	0
January 1, 1839	3,120 00	2,152 80	11	6
July 1, 1839	3,120 00	2,059 20	11	0
Jauary 1, 1840	3,120 00	1,965 60	10	6
July 1, 1840	3,129 00	1,872 00	10	0
January 1, 1841	3,120 00	1,778 40	9	6
July 1, 1841	3,120 00	1,684 80	9	0
January 1, 1842	3,120 00	1,591 20	8	6
July 1, 1842	3,120 00	1,497 60	8	0
January 1, 1843	3,120 00	1,404 00	7	6
July 1, 1843	3,120 00	1,310 40	7	0
January 1, 1844	3,120 00	1,216 80	6	6
July 1, 1844	3,120 00	1,123 20	6	0
January 1, 1845	3,120 00	1,029 60	5	6
July 1, 1845	3,120 00	936 00	5	0
January 1, 1846	3,120 00	842 40	4	6
July 1, 1846	3,120 00	748 80	4	0
January 1, 1847	3,120 00	655 20	3	6
July 1, 1847	3,120 00	561 60	3	0
January 1, 1848	3,120 00	468 00	2	6
July 1, 1848	3,120 00	374 40	2	0
January 1, 1849	3,120 00	280 80	1	6
July 1, 1849	3,120 00	187 20	1	0
January 1, 1850	3,120 00	93 60	0	6
Amount overpaid	87,360 00	38,001 60		
Interest thereon	38,001 60			
Total	125,361 60			

EXHIBIT C.

Attorney General Wirt's letter to Mr. Meigs, Commissioner of the Land Office, November 4, 1840, *page* 1387, *Attorney General's opinions.*

This opinion refers to taxation in Illinois. It states the five years' exemption from tax of lands sold after January 1, 1819, and that the State considered lands on which one-fourth of the purchase money had been paid, as subject to the exemption provision. He says: "The doubt is whether the sale must not be consummated by the payment of the whole of the purchase money and the passing of the patent before the lands can be said to be sold.

"If so, lands entered before the 1st January, 1819, and one-fourth of the purchase money paid on them, if standing in this predicament at that day, are still exempt from taxation, because the sale is not complete.

"If, however, the United States have recognized the liability of lands thus circumstanced to be taxed, by issuing patents to purchasers under the sale for taxes, there is an end of the question. Will you say what the practice is," &c.

Mr. Meigs replies as follows:

"It has been my opinion that the lands sold by the United States in any territory, prior to its admission into the Union, were exempt from taxes for five years from the time of sale. The lands were sold on a credit of five years, and if not paid for in that time would revert to the United States. Under this opinion I certainly would not issue a patent to a purchaser at a tax sale, even if he tendered the balance due to the United States, unless he produced an assignment from the original purchaser.

"I do not know that a single application has been made for a patent by a purchaser at a tax sale; if such application has been made and a patent issued, it issued to him as assignee of the original purchaser on production of the assignment, and without any regard to the tax sale."—(Page 15, Pub. Lands, vol. 2.)

EXHIBIT D.

Mr. Taney to the Secretary of War, September 10, 1831, *page* 841.

"I am not aware of any statute of the United States that forbids the Secretary of War, or the accounting officers, to allow interest to a claimant, if it should appear that interest is justly due to him. As the United States are always ready to pay, when a claim is presented supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest, because it is the fault of the claimant if he delays presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment. But if in

Major Tharp's case, or in any other, the Secretary of War, upon a review of the whole evidence, should be of opinion that interest is justly due to the claimant, I think he may legally allow it."

IN THE COURT OF CLAIMS.

ON PETITION OF THE STATE OF ALABAMA.

Brief of United States Solicitor.

This case involves only the question of interest, and is the same question decided in Todd's case, and which was discussed in my brief in the Florida claim of Letitia Humphreys, and which is also discussed by Attorney General Cushing in vol. 7, page 523, in case of Colmesnil.

M. BLAIR.

COURT OF CLAIMS.

The STATE OF ALABAMA *vs.* The UNITED STATES.

LORING, J., delivered the opinion of the Court.

By the provisions of the act of Congress of March 2, 1819, (3 Stat. at Large, 489,) entitled "An act to enable the people of the Alabama Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," it was provided, section 6, proposition 5th: "That five per cent. of the net proceeds of the lands lying within the said Territory, and which shall be sold by Congress from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers; of which three-fifths shall be applied to those objects within the said State under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said State under the direction of Congress."

And by the act of Congress of May 3, 1822, c. 46, § 3, 3 Stat. at Large, 674, it was enacted "that the Secretary of the Treasury shall, from time to time, and whenever the quarterly accounts of public moneys of the several land offices in the State of Alabama shall be settled, pay *three per cent.* of the net proceeds of the sales of lands of the United States lying within the State of Alabama, which, since the first day of September, in the year one thousand eight hundred and

nineteen, have been, or hereafter may be, sold by the United States, after deducting all expenses incident to the same, to such person or persons as may or shall be authorized by the legislature of the said State of Alabama to receive the same, &c.; which sum or sums thus paid shall be applied to making public roads and canals, and improving the navigation of rivers within the said State of Alabama, under the direction of the legislature thereof," &c.

And by the act of Congress of September 4, 1841, c. 16, § 17, 5 Stat. at Large, 452, "the two per cent. of the net proceeds of the lands sold by the United States in the State of Alabama since the first day of September, eighteen hundred and nineteen," &c., was relinquished to the State of Alabama by the United States, to be applied to the purposes of internal improvement specified in the act, under the direction of the legislature of Alabama.

By these acts of Congress the State of Alabama became entitled to receive five per cent. of the proceeds of the lands lying in her territory and sold by the United States "*from and after the first day of September, in the year eighteen hundred and nineteen.*"

From 1821 to 1846 accounts of the proceeds of the lands sold were adjusted and settled between the United States and the State of Alabama, according to the construction of the law then held by the Treasury Department—that Alabama was entitled to her statute proportion of the proceeds of sales begun or entered upon *after* the first day of September, 1819, and not of sales begun before and completed *after* that day. In 1846 a different construction of the law was adopted by the department, and it was held to entitle Alabama to her proportion of the proceeds of sales concluded *after* the 1st of September, 1819, though begun and entered upon *before* that day.

On this new construction the accounts between the parties were revised, and it was ascertained that on such construction Alabama should have received $103,991 20 more than had been paid to her; and this amount was paid by the United States to Alabama on the 16th of February, 1850.—(Exhibit 1, page 3.)

The State of Alabama alleging that the said amount of $103,991 20 accrued to her between the years 1820 and 1831, claims interest upon it, as specified in Exhibit A, annexed to her petition, and amounting to $164,306 23.

It is admitted by the petitioner that by the general rule the United States are not liable for interest; but it is claimed that this case should be made an exception. The facts of the case furnish no reason for doing so; for it is not a case of wilful default or of neglect on the part of the United States. If that is admitted, which the argument assumed, that the original construction of the law was erroneous, then the non-payment of the $103,991 20 resulted from a mistake which, for all that is shown, was mutual between the parties. That mistake was rectified as soon as it was known, and the money was paid as soon as it was demanded. On these circumstances no contract for interest can be implied against the United States, who in all cases are *presumed* to contract to pay without interest; and in such cases interest is not payable by the rule of the government advisedly established.—

(Opinions of Attorney's General, vol. 7, p. 523, case of John D. Colmesnil.)

After presenting this claim for interest on the sum of $103,991 20, the petition of Alabama proceeds thus: "Should it (the claim for interest) fail to receive the anticipated recognition of the Court, then the State presents another and *entirely distinct claim*, one which she would not advance but in case of the denial of her prior claim. This secondary claim none will contest. It is merely for repayment to the State of moneys which she overpaid the United States through the error of the latter; moneys which she did not owe, and which are, in truth, her property in the United States treasury. The particulars of the matter are given in Exhibit B."

In support of this claim Alabama alleges, (in her printed argument, p. 14,) that in 1836 the United States became possessed of the bonds of Alabama to the amount of one million six hundred and ninety-seven thousand dollars, carrying interest, which interest Alabama has been required to pay, and has paid semi-annually, to the United States "from their issue to this day" of filing her petition; that the United States should, in 1836, have applied the $103,991 20, then due to Alabama, towards the payment of those bonds, and thus, at and from that time, reduced the amount on which interest was payable to the United States by Alabama. And Alabama on these allegations claims, in effect, that an account be now stated between the parties, as if the said sum of $103,991 20 had been so applied to the bonds of Alabama by the United States in 1836, and that the over payments of interest by Alabama be repaid to her, with interest on each over payment from its date; making, as set forth in said Exhibit B, a total of $125,361 60.

The allegation in the petition, that this "*secondary*" claim is an "*entirely distinct claim*" from the prior claim of interest on the $103,991 20, is material, and it is not admitted. It is evident that this "*secondary*" claim could not have arisen if the United States had paid the sum of $103,991 20 in 1836; and that it would have been satisfied if the United States had paid interest on that sum in February, 1850. The claim therefore is, in effect, in the position of the parties a claim for interest on the $103,991 20, and is thus a paraphrase only of the claim for interest, which has been overruled.

But the evidence obtained from the Treasury Department since the printed argument of Alabama was submitted shows that the United States did not become "possessed" of the bonds of Alabama. By that evidence (Exhibits 2 and 3) it appears that under the treaties of 1832 and 1834 with the Chickasaw Indians, certain lands belonging to those Indians were required to be surveyed and sold for their benefit; and the treaties and the laws carrying them into effect required the Secretary of the Treasury and the Secretary of War, respectively, to invest the proceeds of such sales belonging to the Indians under those treaties in stocks and securities bearing interest "*in trust for those tribes; such interest being paid to them through those departments.*" And the bonds of Alabama in question were acquired by such investments.

Upon these facts the United States had no title, legal or equitable,

in such bonds. After such investments were made the legal title in them was in the persons ex-officio holding them in trust, and the equitable title and beneficial interest were in the Indians as *cestuis que trust.* The claims therefore, on the bonds, and for the $103,991 20, were not mutual debts, nor between the same parties, so that set-off or deduction was out of the question. The tenure and uses of the bonds were declared and fixed by law, and they could not be otherwise held or used.

But if the facts were as the petitioner alleges, and the United States, in 1836, had held the bonds, and in their own right, and at the same time owed Alabama the $103,991 20, still the United States were under no legal obligation to apply the debt she owed to the bonds she held. If the United States had a right so to do, she had also the right to pay the money to the State of Alabama and thereby legally and absolutely discharge that debt forever. And if Alabama demanded and accepted the payment of the $103,991 20, she was thereafter precluded from objecting that the sum was not applied to her bonds by the United States. The evidence shows that Alabama, with a full knowledge of all the facts she shows here, demanded and received of the United States the debt of $103,991 20 on the 16th of February, 1850, six years before she filed her petition in this Court. There is no power in any court of law or equity to revive that debt, to annul the fact of a legal payment, or prevent or alter its legal consequences.

Upon the whole case we are of opinion that the petition establishes no claim against the United States.